IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1037 OF 2002 (M/S)
(Old No. 26742 of 1998)

1. Tika Ram Singh Rawat, aged about 34 years,
   S/o Shri Bheem Prakash, R/o Village Damar,
   P.O. Bhiree, District Rudraprayag
2. Raghu Nath Singh, aged about 50 years,
   S/o Sri Hari Singh Chauhan, R/o Village Damar,
   P.O. Bhiree, District Rudraprayag

..... Petitioners

Versus

1. Presiding Officer, Labour Court, Dehradun
2. The Chief Engineer, Irrigation Deptt.,
   Cantt. Road, Lucknow
3. The Executive Engineer, Irrigation Division,
   Rudra Prayag, Chamoli (Now District Rudraprayag)

..... Respondents.

Shir C.K. Sharma, learned counsel for the petitioners.
Shir Nand Prasad, learned Standing Counsel for Respondents.

Dated: 28.07.2005.

Hon'ble P.C. Verma, J.

By means of this writ petition, the petitioners have prayed for writ of Certiorari to quash the impugned order dated 03.06.1998 passed by Respondent No. 1-Presiding Officer, Labour Court, Dehradun in Reference Case No. 37 of 1995.

2. Brief facts of this case according to the petitioners are that petitioners' were appointed on 01.05.1985 and 01.06.1983 respectively as part-time Pump Operator/Helper at Kodgi Pump House, Rudra Prayag, District Rudraprayag. The petitioners were continuously working but they were not regularized till 1990. Therefore, they filed a case C.V. No. 504 of 1990 on 13.08.1990 before the Conciliation Officer, Lucknow for regularization for their services. The respondents feeling

annoyed by the aforesaid conduct, terminated the services of the petitioners on 13.10.1990. According to the petitioners, the services of the petitioners' were terminated due to this reason that the petitioners' sought regularization. Feeling aggrieved, the petitioners' raised industrial dispute, which was referred to the Labour Court in the following terms:-

> ***"Whether the termination of Shri Tika Ram S/o Shri Om Prakash Rawat, Helper and Shri Raghu Nath Singh Chauhan S/o Shri Hari Singh Chauhan, Pump Operator by the employer is legal/or justified? If no, then what benefit/relief concerned workman is entitled for and to what extent?"***

3. The labour court upon hearing the reference issued notice to the employer and employees-workmen to file their written statement/objections. In the objections, the petitioners have stated that since the Industrial Dispute Case No. 504 of 1990 was pending, their services could not have been terminated on 13.10.1990 without the permission of the court as provided under Section 6-E of the U.P. Industrial Disputes Act (***hereinafter referred to as the Act***). Further objection was raised that the termination was without compliance of provisions of Section 6-N of the Act.

4. The respondents in response to their objections stated that the petitioner's were appointed in the year 1985 instead of 1990 as has been alleged. It was also pleaded that the petitioners' did not work for 240 days in the preceding calendar year, therefore, there was no cause of action for reference and the reference was liable to be rejected. The labour court has also given the details of work, which is in the judgment, and is being reproduced as under:-

Name of workman	Year	Working days
Raghu Nath Singh	1985	237½ days (April 85 to November, 85)
	1986	254 days (February 86 to July 86, September to November, 86)
	1987	82 days (January, February, September)
	1988	127 days (August to December)
	1989	140 days (January to May)
	1990	130 days (April to August, 90)
Tika Ram	1985	252 days (April to December)
	1986	262 days (January to November)
	1987	158 days (January to March, June to August)
	1988	110 days (August to December)
	1989	207 days (February to June and September)
	1990	130 days (April to August, 1990)

5. The Labour Court after relying on the judgment of Allahabad High Court in the case of "Hindustan Sugar Mills Ltd., Gola Gokarnath, District Khiri Vs. U.P. State and others" in which it was held by the Allahabad High Court that the benefits of Section 6-N of U.P. Industrial Disputes Act can only be availed if the petitioner has worked for 240 days in a year before the date of termination.

6. Section 6-N of the U.P. Industrial Disputes Act provides for condition precedent to retrenchment of workmen which reads as under:-

> **"6-N Conditions precedent to retrenchment of workmen:-** No workmen employed in any industry who has been in continuous service

for not less that one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of notice.

Provided that no such notice shall be necessary if the retrenchment is under an agreement, which specifies a date for termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days; average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the State Government."

The definition of one year continuous service has been defined under Section 25-B of the Industrial Disputes Act and have been inserted in the Central Act which is not in the State Act, which reads as under:-

25B. Definition of continuous service: - For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or as strike which is not illegal, or a lock-our or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year of six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Thus, if the employer has completed 240 days of continuous service, he cannot be retrenched under Section 6-N of the U.P. Industrial Disputes Act. It is noteworthy that Section 6- N does not provide that completion of one year i.e. completion of 240 days must be preceding to the date of termination. Section 2-g defines the continuous service as under :-

> **Section 2(g) "Continuous service' means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.**

7. This definition of Section6-N and Section 2-g of the Act came into consideration before the Hon'ble Apex Court in the case of "***U.P. Drugs & Pharmaceuticals Co. Ltd., Vs. Ramanuj Yadav and others {(2003) 8 Supreme Court Cases 334}"*** by which the Apex Court in para 11 and 12 held as under:-

> **"11. Learned counsel for the appellate, however, relies upon Mohan Lal Vs. Management of M/s Bharat Electronics Ltd. (1970 3 SCC 67. In that case, the Court was considering the scope of Section 25-B of the Industrial Disputes Act. It was observed that in order to invoke the fiction enacted in clause (2)(a) of Section 25-B, it is necessary to determine first the relevant date., i.e., the date of termination of service which is complained of as retrenchment. After**

that date is ascertained, move backward to a period of 12 months, the just preceding the date of retrenchment and then ascertain whether within a period of 12 months, the workman has rendered service for a period of 240 days. It was held that if there three factors are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in clause (2)(a), it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F. In Mohan Lal's case, the appellant was employed with the respondent from 8th December, 1973. His services were abruptly terminated by letter dated 12th October, 1974 w.e.f. October 19, 1974. This Court said that it is not necessary for the purpose of clause (2)(a) of section 25-B that workman should be in service for a period of one year. It was held that if he is in service for a period on one year and that service in continuous service within the meaning of clause (1), his service would be governed by clause (1) and his case need not be covered by clause (2). Clause (2) envisages the situation not governed by Clause (1). Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period on one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backward and just preceding the relevant date of retrenchment. These were the facts under which it was held as to how the period of 240 days was to be calculated. The decisions in the case of Mohan Lal does not lay down that if a workman has worked for more than 240 days in any number of years and if during the year of his termination, he has not worked for the said number of days, he would not be entitled to the benefit of section 25-B. the question with which we are concerned was not under consideration in Mohan Lal's case. If the viewpoint propounded by the management is accepted, then in every year the workman would be required to completed more than 240 days. If in any one year the employer gives him actual work for less than 240 days, the service of the workman can be terminated without compliance of Section 6N of the UP Act, despite his having worked for number of years and fore more that 240 days in each year except

the last. Such an intention cannot be attributed to the UP Act. In the present case, as already notices, the finding of the labour court is that the respondents worked for more that 240 days in each year from 1983 to 1986 but not having worked for 240 days in the year of termination the termination was held by the labour court not to be violative of section 6N. Reference may also be made to the decision in Ramakrishna Ramnath Vs. the Presiding Officer, Labour Court Nagpur and another, where this Court observed that the provisions requiring an enquiry to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment does not show that a workman, after satisfying the test, has further to show that he has worked during all the period he has been in service of the employer for 240 days in the year. The interpretation propounded for the appellant is wholly untenable. The decision in U.P. State Cooperative Land Development Bank Ltd. Vs. Taz Mulk Ansari & Others, 1994 Supp. (2) SCC 745, relied upon by learned counsel for the appellant has not applicability since that was in a case of clause (a) of Section 6N and therefore, Section 2(g) had not relevance.

12. The High Court has rightly concluded that the termination of the respondents was in violation of Section 6N read with Section 2(g) of the U.P. Act."

8. The ratio of Apex Court's judgment is fully covered with facts and circumstance of the case as the labour court has itself recorded a finding that in the previous years both petitioners have worked for more than 240 days and they have been continuously engaged from 1985. Therefore, the termination order of the petitioners was in violation of Section 6-E of the Act to which the labour court has not adverted to as the case Act No. 504 of 1990 was pending before the Reconciliation Officer, Deputy Labour Commissioner.

9. Thus, in view of the above, the impugned award cannot be sustained in the eye of law, as the petitioners have completed 240 days of service in the

previous calendar years. Therefore, the termination order is in violation of Section 6-N of Act, as the provisions of Section 6-N have been held to be mandatory.

10. The order of termination passed in violative thereof is *ab initio* and the relationship of master and servant does not snap.

11. Accordingly, the writ petition is allowed. The impugned award dated 30.08.1997 as well as the order of removal dated 13.10.1990 are set aside. The petitioner shall be reinstated in service, however, they shall not be paid any back wages.

(P.C. Verma, J.)

Rajeev Dang

WPMS No. 1037 of 2002
Hon'ble P.C. Verma, J,
(Delay Condn. Appl in. No. 2198 of 2006
(Review Appln. No. 17/06)

Heard learned counsel for the parties on the application supported by affidavits.

The reasons mentioned in the accompanying affidavit for the application for condonation of delay are not satisfactory, as the delay has not satisfactorily been explained. Hence the application for condonation of delay is rejected. Consequently, the review application is also rejected.

Both the applications are rejected accordingly.

(P.C.V., J.)

25.05.2006
Rajeev Dang